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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,400	01/14/2005	Hendrik Fredrik Stoltz	31408/04189	1286

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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,400

Applicant(s)

STOLTZ, HENDRIK FREDRIK

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-102 is/are pending in the application.
- 4a) Of the above claim(s) 91-102 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-85 is/are rejected.
- 7) ☒ Claim(s) 86-90 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group I (claims 52-90) in the reply filed on 4 August 2006 is acknowledged.
2. Claims 91-102 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4 August 2006.

Information Disclosure Statement

3. The references cited in the Search Report for PCT/IB03/00936 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO/SB/08A and 08B form, must be filed within the set period for reply to this Office action.

Response to Preliminary Amendment

4. Receipt is acknowledged of a preliminary amendment, filed 13 September 2004, which has been placed of record and entered in the file.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 52-54, 60, 62-64, 69, 70, 77, 80 and 81 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheppard (**EP 1,013,562**).

The Sheppard reference as shown in figure 9 meets all of applicant's claimed subject matter. No patentable weight is afforded to the expression "preform for moulding to form a container" and to the expression "serving to have sealingly attached" in claim 52 as such are predicted on one or more future acts which may or may not occur.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 55-57, 61, 65-67 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard (**EP 1,013,562**) in view of Goodall (**US 6,041,953**).

Regarding claims 55, 61, 65 and 78, the Sheppard reference meets all of applicant's claimed subject matter with the exception of the shoulder being frusto-conical. The Goodall reference discloses that it is old and well known in the art to provide a shoulder on a container which is frusto-conical (9, 10). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Sheppard shoulder to have been frusto-conical as taught by Goodall, in order to force a seal into engagement with the shoulder.

Regarding claims 56, 57, 66 and 67, the Sheppard container as modified by Goodall shows that the shoulder inwardly converges and that the shoulder commences at the extremity.

9. Claims 58 and 82-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard (**EP 1,013,562**) in view of Chino (**US 6,164,470**).

The Sheppard reference meets all of applicant's claimed subject matter with the exception of being produced by injection molding. The Chino reference discloses that it is known to form a stretch blow molded container from an injection molded preform. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Sheppard container by having it formed as a stretch blow molded container from an injection molded preform, as taught by Chino, as such a method is routine to one of ordinary skill in the art.

10. Claims 59 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard (**EP 1,013,562**) in view of Starr (**US 3,189,072**).

The Sheppard reference meets all of applicant's claimed subject matter with the exception of the easy pouring feature with a thin, radially outwardly thinning, curled-over, annular lip. The Starr reference discloses that it is old and well known in the art to provide a container with an easy pouring feature with a thin, radially outwardly thinning, curled-over, annular lip (14, 16). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Sheppard container to have included an easy pouring feature with a thin, radially outwardly

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thinning, curled-over, annular lip, as taught by Starr, for its self-evident benefit in pouring the contents of the container and for forming a cooperative seal with a closure.

11. Claims 71-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard (**EP 1,013,562**) in view of Hartzheim (**EP 0,404,153**).

The Sheppard reference meets all of applicant's claimed subject matter with the exception of the tab extending in a gradual curve from the periphery and then at a spacing from the disc. The Hartzheim reference discloses that it is old and well known in the relevant art to provide a disc type pull tab including that the tab extends in a gradual curve from the periphery of the disc and then at a spacing from the disc. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Sheppard container by having provided a tab arrangement as taught by Hartzheim, in order to permit one to grasp the tab as it is spaced from the disc. Regarding the radius of the curve and the spacing recited in claims 72-74, it would have been an obvious matter of design choice to have further modified the radius of the curve and the spacing, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Regarding claims 75 and 76, the recitations "such that ..." found in the claims are merely intended use recitations which are fully capable of being practiced by the now modified Sheppard container arrangement.

12. Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheppard (**EP 1,013,562**).

The Sheppard reference discloses the claimed invention except for the outer of the plastic laminates having a higher melting temperature. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the foil-plastic sandwich laminate to have had the outer of the plastic laminates have a higher melting tempature, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

13. Claims 86-90 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

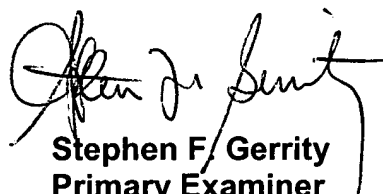
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show methods of making containers and containers. All are cited as being of interest and to show the state of the prior art.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

16 October 2006